American Medical Services, Inc., d/b/a River Hills Nursing Home West and 1199W, a Subdivision of National Union of Hospital and Health Care Employees (RWDSU/AFL-CIO). Case 30-CA-6528

July 29, 1982

SUPPLEMENTAL DECISION AND ORDER

By Members Fanning, Jenkins, and Zimmerman

On September 30, 1981, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding, in which it granted the General Counsel's Motion for Summary Judgment and found that Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to bargain collectively with 1199W, a Subdivision of National Union of Hospital and Health Care Employees (RWDSU/-AFL-CIO), herein referred to as the Union, following a Board election in Case 30-RC-3946 and the Union's certification as the exclusive collectivebargaining representative of Respondent's employees in the unit found appropriate. On May 27, 1982, the Board notified the parties that it had decided. sua sponte to reconsider its Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. We hereby reaffirm our previous Decision.

This case involves Respondent's test of the Board's certification of the Union as the exclusive bargaining agent for a unit composed of Respondent's full-time and regular part-time registered nurses. In its answer to the complaint, Respondent argued that the unit employees were supervisors within the meaning of Section 2(11) of the Act, and were therefore exempt from coverage under the Act. Counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment finding that Respondent improperly sought to relitigate issues which were raised and decided in the earlier representation case. The Board agreed with the General Counsel and granted summary judgment.

Subsequently, on March 11, 1982, the Board's Decision and Order in Northwoods Manor, Inc., 260 NLRB 854, issued. In that case, which involved a unit of registered nurses serving as charge nurses, the Board rejected the Regional Director's application of the 50-percent rule developed in A. Barron Hepburn Hospital, 238 NLRB 95 (1978), and New

York University, 205 NLRB 4 (1973). The Board stated that where a "substantial supervisory function is a principal duty common to the entire group of employees sought to be represented," the fact that the function is exercised with respect to employees outside the unit is irrelevant and "the Board must ascertain whether the supervisory duties evidenced, even if they consume less than 50 percent of an individual's work time, are more than merely sporadic or irregular." Relying on the independent authority of the registered nurses to discipline employees and effectively to recommend discharge, the Board concluded that the charge nurses exercised substantial supervisory authority. Because the unit involved in this case is composed solely of registered nurses serving as charge nurses, p.m. or night supervisors, who direct nonunit employees. and because the Acting Regional Director relied upon A. Barron Hepburn Hospital and New York University, we decided to reconsider our decision.

Although there are similarities between the factual circumstances presented in this case and those in Northwoods Manor, we do not find Northwoods Manor to be controlling. While the Acting Regional Director relied upon A. Barron Hepburn Hospital and New York University, the 50-percent principle was not essenital to his conclusion that the nurses are not supervisors with the meaning of Section 2(11) of the Act. He also found that the registered nurses do not utilize any authority or ability not garnered from professional experience and ability and that many of their duties involve no more than routine matters based upon objective policy considerations established by Respondent. In this regard, the Acting Regional Director noted that if the registered nurses have doubts about whether patient abuse has occurred, they are to take no action but simply report the occurrence to the director. The record discloses one exception to this policy: a registered nurse spontaneously recommended the discharge of an employee for leaving a patient unattended on a toilet for 2-1/2 hours. The director of nursing subsequently approved the recommendation. The Acting Regional Director found, and we agree, that the incident occurred under unique and isolated circumstances and does not appear to be indicative of the registered nurses' authority. To the contrary, the Acting Regional Director found that the record shows that the staff coordinator does the majority of the disciplining in addition to evaluating registered nurses and licensed practical nurses. He further found that the registered nurses have no authority to hire, grant wage increases, vacations, sick leave, personal leave, funeral leave, or the authority to effectively recommend such. These factors alone support the conclusion that the duties

^{1 258} NLRB 425.

and authority of the registered nurses regarding the grievance, disciplinary, or evaluation process is too circumscribed to constitute supervisory authority as contemplated under the Act. Thus, in contrast to the facts in *Northwoods Manor*, there is no evidence of a "substantial supervisory function" which represents "a principal duty common to the entire group of employees sought to be represented." Accordingly, we conclude that Respondent, by refusing to recognize and bargain with the Union following its certification, violated Section 8(a)(5) and (1) of the Act.

On the basis of the foregoing, we hereby reaffirm our original findings, conclusions of law, and Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby reaffirms the original Decision and Order in this proceeding and orders that the Respondent, American Medical Services, Inc., d/b/a River Hills Nursing Home West, Pewaukee, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Board's original Decision and Order (258 NLRB 425).